

IN THE MATTER OF FACT-FINDING

BETWEEN:

City of Ames,

Employer,

and

**Ames Professional
Firefighters Association
Local 625,**

Union.

BEFORE:

**Kim Hoogeveen, Ph.D.
Fact Finder**

Issued: April 4, 2006

APPEARANCES:

For the Association:

Jack Reed, State President, Iowa PFF

Mike Bryant, President, Ames PFF

Jason Vennard, Team Member

Dave Folkmann, Team Member

Doug Neys, Team Member

John Saunders, Team Member

For the City:

Doug Marek, City Attorney

Julie Huisman, HR Director

Duane Pitcher, Director of Finance

Bob Kindred, Asst. City Manager

Jennifer Hubbard, HR Officer

Judy Parks, Asst. City Attorney

BACKGROUND AND STATEMENT OF JURISDICTION

After the City declined to discuss or accept what was termed a "short form negotiation" offer that was made by the Union on October 6, 2005, the parties began the standard bargaining process for this contract with the Union making initial proposals to the City on October 19, 2005 and the City responding with opening proposals on November 3, 2005. Six bargaining sessions were held including two with the assistance of a mediator. With tentative agreements reached on only a couple housekeeping items, this matter proceeded to fact-finding pursuant to the statutory impasse procedures established in the Public Employment Relations Act, Chapter 20, Code of Iowa. The undersigned was selected to serve as Fact Finder from a list furnished to the parties by the Iowa Public Employment Relations Board.

The fact-finding hearing was convened at 12:03 p.m. on March 24, 2006 in the Ames Public Library. There was no dispute regarding the jurisdiction of the Fact Finder. The hearing was electronically recorded solely for the purpose of an aid to the Fact Finder; the recordings of the hearing were destroyed concurrent with the issuing of this award. There were no disputes regarding negotiability, and the parties agreed on the specified items on which the Fact Finder was to issue recommendations. It was agreed by the parties that the Union would present their case first, with the City to follow, and opportunity for both parties subsequently to rebut. The hearing was closed at the conclusion of testimony. Prior to the hearing, the parties agreed to wave statutory deadlines related to possible subsequent impasse procedures and to assure the Fact Finder a full fifteen (15) days in which to render a recommendation.

Both parties were provided a full opportunity to present exhibits, evidence, witnesses, and arguments in support of their respective positions. All who provided testimony were informative, clear, forthright, and devoid of the unfortunate rancor that often imbues such proceedings – the parties are

commended for their professionalism throughout the hearing. The fact-finding recommendations below are made on the basis of the evidence, facts, and arguments presented by the parties.

FACT-FINDING CRITERIA

The Iowa Public Employment Relations Act specifies criteria that are to be used by an Arbitrator in assessing the reasonableness of the parties' proposals. Although the statute is silent regarding criteria to be used by fact finders, it is now well accepted that fact finders base their recommendations on the statutory criteria set forth in Iowa Code 20.22(9):

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.*
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.*
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.*
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its business.*

ITEMS AT IMPASSE

Holidays

Position of the Union: The Union is proposing to increase the number of holidays from seven (7) to ten (10).

Position of the City: The City is proposing to change the language of Section 2 of ARTICLE 10. Current language is as follows:

Fifty-six Hour A Week Employees: If a holiday falls under a normal shift duty day, Fire personnel will be compensated for these holidays by working a holiday routine tour of duty.

Twenty-four hour Fire personnel shall be granted seven floating 24-hour shift holidays in lieu the ten City holidays. These holidays shall be scheduled with regard to seniority for the employees.

Holidays for Firefighters shall be chosen on a company basis permitting one Firefighter per company to be on a holiday or vacation at one time, if the Department's operating requirements and responsibilities are satisfied. Holidays for Lieutenants shall be chosen with Lieutenants on the same shift, permitting one Lieutenant per shift to be on holiday or vacation at one time, if the Department's operating requirements and responsibilities are satisfied.

Effective January 1, 2002 annual vacation and holiday picks are honored and assured except during time of extraordinary circumstance. Same-day picks will be denied if they create overtime.

Holidays must be taken in 24-hour increments.

New language proposed by the City for Section 10.2 is as follows:

Fifty-six Hour A Week Employees: If a holiday falls under a normal shift duty day, Fire personnel will be compensated for these holidays by working a holiday routine tour of duty.

Twenty-four hour Fire personnel shall be granted seven floating 24-hour shift holidays in lieu the ten City holidays. These holidays shall be scheduled with regard to seniority for the employees.

Requests for all holidays must be submitted through the Lieutenant to the Shift Captain, or in the case of the Fire Inspector to the Deputy Chief, 30 days in advance for approval and disapproval. All other picks become same-day picks and will be denied if they create overtime. A maximum of three (3) 24-hour bargaining unit members may use earned time off per day.

Annual vacation and holiday picks are honored and assured except during time of extraordinary circumstance.

Holidays must be taken in 24-hour increments.

Vacations

Position of the Union: The Union proposes to change ARTICLE 32 (Vacations) to provide additional vacation. The current contract calls for 112 hours per year for the first seven years; 168 hours per year for years eight through fourteen; 224 hours for years fifteen through twenty-five; and 280 hours per year above twenty-five years. The Union proposes to increase vacation accrual as follows: 112 hours per year for the first five years; 168 hours per year for years six through ten; 224 hours for years eleven through fifteen; 280 hours per year for years sixteen through twenty; and 336 hours per year for years above twenty.

Position of the City: The City proposes to leave the accrual rates specified in ARTICLE 32 unchanged from current contract. They are, however, asking for significant language change. Current contract language is as follows:

Requests for all Vacation leave must be submitted through the Lieutenant to the Shift Captain, or in the case of the Fire Inspector to the Deputy Chief, prior to taking leave, for approval and disapproval. Vacation leave shall be scheduled with regard to seniority of employees, the Department's operation requirements and responsibilities and, insofar as possible, with the request of the employees after approval or disapproval of a departmental supervisor.

Vacation for Firefighters shall be chosen on a company basis permitting one Firefighter per company to be on a holiday or vacation at one time, if the Department's operating requirements and responsibilities are satisfied. Vacation for Lieutenants shall be chosen with Lieutenants on the same shift,

permitting one Lieutenant per shift to be on holiday or vacation at one time, if the Department's operating requirements and responsibilities are satisfied.

Effective January 1, 2002 annual vacation and holiday picks are honored and assured except during time of extraordinary circumstance. Same-day picks will be denied if they create overtime.

Vacations can be taken in a minimum of one-half hour increments.

The City is proposing the following language change:

Requests for all Vacation leave must be submitted through the Lieutenant to the Shift Captain, or in the case of the Fire Inspector to the Deputy Chief, 30 days in advance, for approval and disapproval. All other picks become same-day picks and will be denied if they create overtime. A maximum of three (3) 24-hour bargaining unit members may use earned time off per day. Vacation leave shall be scheduled with regard to seniority of employees, the Department's operation requirements and responsibilities and, insofar as possible, with the request of the employees after approval or disapproval of a departmental supervisor.

Annual vacation and holiday picks are honored and assured except during time of extraordinary circumstance.

Vacations can be taken in a minimum of four-hour increments.

Discussion: Vacation & Holiday¹

The heart of this fact-finding centers on the City's proposal to substantially change the pick procedure used by bargaining team members to secure vacation and holiday leave. Neutrals have generally held that management has the right to schedule vacations consistent with the needs of the enterprise except where this right is limited by contract language or past practice. Management should also not be allowed to artificially create a criteria or objective that would unilaterally reduce the employee's ability to make good use of an earned benefit.

¹ Although separate items at impasse, I have elected to discuss them jointly due to the overlap in administration and implications.

The current procedure, i.e., utilizing four pick groups, has long been past practice. The City notes that they have attempted to secure a voluntary change in this contract language over the last three contract negotiation processes. The Union counters that the pick procedure has been a prized aspect of the bargaining agreement to their members – so much so that they have made substantial concessions during previous bargaining processes to ensure its continuance.

The City claims that their primary reason for the significant changes they have proposed for both vacation and holidays (e.g., the pick process, sign up notice, a reduction in the numbers of members who could be off on a given shift, and minimum usage for vacation) is to assist the City in better maintaining their targeted minimum manning level of 13 members for this bargaining unit. (Note the actual manning level sought is 15, but that includes an anticipated availability of two of the three chiefs.) Ames has long operated with a minimum manning level of 11 – something the current pick procedure accommodates reasonably well. The City explains that their target minimum manning level of 13 comes from standards developed by the National Fire Protection Association (NFPA).

The City's argument regarding their desire to reach a higher minimum manning level is problematic. First, the standards developed by the NFPA are not mandatory nor have they been adopted by many municipalities in Iowa. Additionally, the Union noted that the City has not shown any particular interest in adopting standards that the NFPA has developed for other aspects of the fire department's operation. The Ames City Council recently considered a proposal to increase the number of firefighters so as to ensure that the higher minimum manning level could be maintained under the current contract language. The City Council elected not to authorize the additional staffing.

It is indisputable that public safety would be better served with a greater number of available personnel in the Ames Fire Department, i.e., 13 is better than 11.

But it is also true that 16 would be better than 13, i.e., more would always be better. Staffing standards or recommendations as advanced by professional and/or advocacy groups are often at the extreme; it is not surprising that most municipalities have elected to make their own judgment in this regard. City representatives could not cite an instance where they believe the public welfare or safety was endangered because of a lack of available response personnel in the Ames Fire Department.

The City Council elected to not increase staffing levels to reach their stated minimum manning level desires and are now hoping to change a more than twenty year past practice via contract negotiations to secure that objective – all without being able to show comparability with respect to their desired staffing levels or being able to show a substantial problem that is being created by the current practice. Finally, the City's proposal also suffers from a lack of specificity. The City indicates that they want to reduce the number of pick groups from its current four to three, but was unable to specify how their proposed three pick groups would be structured. It is going to be a rare neutral who will change a long-standing, successful past practice that one party has sacrificed to achieve and sustain with an unspecified new practice to achieve an objective that the employer has unilaterally identified and had other means to achieve via its own hiring practices. The City suggested at one point in the hearing that the Fact Finder may want to come up with a novel suggestion as to how the vacation and leave process might be modified. Again, unless the City can show that the current language has engendered substantial operational problems, and that the Union has been unreasonably intransigent in addressing those problems, it is not likely that a neutral will substitute his or her judgment for that of the parties regarding such a longstanding and complex issue.

The one area of the City's argument that is persuasive is the current language that allows vacations to be used in one-half hour increments. None of the comparables has anything even close to this provision, and neither party

provided any information as to how many vacation periods of one hour or less were actually used by members of the bargaining unit. At some point, such short time periods create an administrative headache while becoming almost nonsensical. One cannot even get to the parking lot, knock a bit of snow off the car, get gas, and grab a burger in 30 minutes. Does it really make sense to constitute such short absences as “vacation?” Taken to the absurd, a firefighter with 25 years of experience could take 560 such half-hour vacations in a year comprised of 122 workdays, i.e., 4.6 vacations per shift worked. Although I recognize the uniqueness of this agreement, this provision falls so far outside the norm and common sense that it is reasonable to recommend that vacation time be used in no less than two-hour increments – still a very generous and flexible standard for the employees.

The Union’s proposals for an increase in the number of holidays and a greater accrual rate for vacation are not persuasive. It is true that firefighters are working 24-hour shifts, and as such, their average workweek averages 56 hours. It is also true that they work 122 days per year (less vacation and holiday) where the 40-hour per week employee works 260 days per year (less vacation and holiday). The City’s “apples and oranges” argument is sound.

The Union does appear to have a good case with respect to comparability; however, as will be case in other sections of this recommendation, **I do not believe comparability to be a determinative factor in this particular fact-finding.** If comparability was used as the determinative factor, I would be making many recommendations to change this contract – and both parties would be less happy and worse off as a result. These parties have a unique bargaining history and a collective bargaining agreement that appears to have worked well for many years. Neutrals can sometimes weigh the comparability factor too heavily; this collective bargaining agreement is not broken, the public is receiving good services from the fire department, and the City appears to be well managed. Excellence is seldom achieved by those who are fearful of being out

of step; bargaining history and the tangible success of an existing collective bargaining agreement can, and sometimes should, trump comparability.

Another mitigating factor against the Union's proposals to increase holiday and vacation is the unchallenged fact of the almost non-existent turnover in the fire department and the literally scores of applications the City receives for any opening that occurs. A position in the Ames Fire Department is obviously a valued job, and the present compensation package and working conditions are more than adequate to draw a great number of qualified applicants whenever a position is open.

The Ames Firefighters are well-paid vis-à-vis the comparability group. Should the Firefighters insist that a neutral use comparability as the dominate factor in determining their number of paid holidays, they perhaps should be cautioned that a similar rationale may result in low wage increases for the next several years and significant changes in leave procedures. In short, all contracts have tradeoffs – some aspects will be above average while other will be below the average of the peer group. (Note that the highest paying city in the comparison group, Sioux City, also has somewhat more modest vacation provisions.) The Ames Firefighters have a total compensation package that is quiet competitive with respect to their peers in the comparison group.

Like the minimum vacation increments noted above, one other minor adjustment in vacation seems reasonable. Given the data indicating that the amount of earned vacation is well behind most all other cities in the comparison group, and the fact that other bargaining units within the City now receive a fifth week after 23 years of service, there is justification for recommending this somewhat minor adjustment.

RECOMMENDATIONS:

Holidays: Retain current contract language.

Vacation: I am recommending two changes to existing language: 1) Provide a fifth week of vacation after 23 years of service, and 2) require that vacations be taken in a minimum of two-hour increments.

Working Out-of-Classification

Position of the Union: The current contract calls for Firefighters who replace absent Lieutenants, and Lieutenants who replace absent Captains, to be compensated at the higher rate of pay starting the 25th hour after serving for 24 consecutive hours in the elevated role. The Union proposes to change the contract language so as to allow hour-for-hour out-of-classification pay starting at the first hour whenever Firefighters are acting as Lieutenants, or Lieutenants are acting as Captains.

Position of the City: Current Contract language.

Discussion: Out-of-Classification Pay

Again, with respect to comparability, the Union appears to have a strong position with their proposal to change the contract language to allow them to receive out-of-classification pay for the first hour in which they are assigned such duties.

Looking at the data supplied by the Union, it appears that most other departments in the comparison group handle this situation differently (i.e., more generously) than Ames, i.e., of those with contract language, 5 of 9 provide first hour pay differentials and 3 of 9 require 24 hours of service out-of-classification but then pay retroactively to the first hour. The Union characterized it as “ridiculous” that individuals assuming these additional responsibilities do not receive additional pay until the 25th consecutive hour of such additional

responsibilities, and repeatedly noted that Firefighters assumed additional liabilities and responsibilities when serving outside of their normal pay classification. Although true, the Union could not provide a single instance of any such negative consequence having actually occurred to any member of the bargaining team as a result of such activity. The City also makes a powerful point in noting that when a Firefighter is temporarily acting in the capacity of a Lieutenant, or a Lieutenant in the capacity of a Captain, they are not assuming the full responsibilities or duties for which additional pay is provided. For example, they do not have to implement or monitor full policies and procedures, conduct employee evaluations, or handle employee discipline.

Although not directly causative, the Union must recognize that the unusual flexibility they have in securing leaves and vacations makes it all the more important that the City have adequate management flexibility to temporarily assign such leadership responsibilities. It is also true that the City agreed in a recent negotiation to reduce the consecutive hours of out-of-classification service needed to receive additional pay from 72 to 24. The strong base pay provided to the Ames Firefighters would appear to more than adequately compensate them for their occasional out-of-classification responsibilities.

RECOMMENDATION:

Out-of-Classification Pay: Retain current contract language – the City's position.

Longevity Pay

Position of the Union: To change the longevity pay from the current fixed dollar for given years of service to the following formula: base pay X years of service X .0005. As an example, a Firefighter making \$50,125 and having 22 years of service would receive longevity pay of $\$50,125 \times 22 \times .0005 = \551 . This

contrasts to current contract language that provided longevity pay of \$440 for this length of service.

Position of the City: Current contract.

Discussion: Longevity Pay

The Union made a proposal with respect to longevity pay, but did not even bother to cost their proposal. Given the relatively strong base pay vis-à-vis the comparison group, I can find no justification for recommending any change in the current longevity pay article.

RECOMMENDATION:

Longevity Pay: Retain current contract language – the City's position.

Wages

Position of the Union: A 4% across the board increase.

Position of the City: A 2% across the board increase.

Discussion: Wages

The City, both in testimony and in their written brief, made the point that it is unreasonable to think that they can continue to "sweeten the pot" every time they negotiate with the Union. That is a reasonable assertion. It is also true that there is no reason to think that the City should be allowed to sour the pot. As there is little sweetening or souring here being recommended, a close look at settlement trends seems to be in order.

There was little disagreement on the facts: (a) Ames Firefighters are among the highest paid in the comparison group of cities, and (b) the settlement trend within the comparison group is reported by both parties as being near 3.25%² and near 3.5% for the other bargaining units in Ames. The City is right to point out that some of the reported settlements from other cities included a reduction in health benefits or additional employee contributions to the health plan, something not occurring here. Increased health plan contributions were accepted by this Union, however, as part of last year's negotiated contract settlement.

There is no recommendation above, nor is there an inability to pay argument being advanced, that would justify a recommendation on wages that veered far from the settlement trend. The insurance considerations in some of the comparable contracts would suggest a slightly lower than trend recommendation; the internal settlements would suggest slightly higher.

RECOMMENDATION:

Wages: A 3.20% across-the-board increase for all wages and steps.

Respectfully Submitted,



Kim Hoogeveen, Ph.D.
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Omaha, NE 68104

² Both parties were somewhat generous when figuring the average settlement as they credited, for example, two-staged increases of 1.5% on July 1 and another 1.5% on January 1 as a 3% package when the actual cost is slightly less.

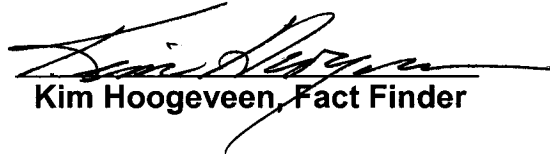
CERTIFICATE OF SERVICE

I certify that on the 4th day of April 2006, I served the forgoing fact-finding recommendation upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Ms. Julie Huisman
Director of Human Resources
515 Clark Avenue
Ames, Iowa 50010

Mr. Mike Bryant
Ames Professional Firefighters
P.O. Box 66
Ames, Iowa 50010

I further certify that on the 4th day of April 2006, I will submit this recommendation for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319-0203.


Kim Hoogeveen, Fact Finder

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